

**E-FILED ON June 27, 2007**

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Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 Debtor.

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

**OPPOSITION TO JESSUPS' MOTION  
 TO DISCLOSE INFORMATION UNDER  
 THE FREEDOM OF INFORMATION  
 ACT AND RELEASE OF FUUNDS TO  
 JESSUP**

In re:  
 USA SECURITIES, LLC,  
 Debtor.

**(AFFECTS USA COMMERCIAL  
 MORTGAGE AND USA CAPITAL FIRST  
 TRUST DEED FUND, LLC)**

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☒ USA Capital First Trust Deed Fund, LLC

Date: July 5, 2007  
 Time: 9:30 a.m.

SCHWARTZER & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
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USA Commercial Mortgage Company ("USACM") and USA Capital First Trust Deed Fund, LLC ("FTDF") hereby opposes the Jessups's Motion to Disclose Information Under the Freedom of Information Act and Release of Funds to Jessups (the "Motion"). This Opposition is supported by the documents attached hereto, the memorandum set forth below, and the entire record in this case.

### **STATEMENT OF FACTS**

1. The Debtors' Third Amended Joint Chapter 11 Plan of Reorganization (the "Plan") was confirmed on January 8, 2007 and became effective on March 12, 2007. It has been substantially consummated.

2. The Jessups' IRAs were investors in FTDF. As such, these IRAs have received pro rata distributions from FTDF (in the same percentages as other investors in FTDF). Copies of the cancelled checks are attached as Exhibit "A".

3. As a result of the sale to Compass Partners, LLC pursuant to the Plan, there will be a substantial distribution to investors in FTDF including the Jessups' IRAs.

4. Under the Plan, the Jessups' IRAs are not entitled to payments other than the same payments as are being made to other investors in FTDF.

5. With regard to disclosure of transactions, the Jessups have available to them the same information available to other investors in FTDF. Such information is available at the BMC website, <http://www.bmccorp.net/master.asp?InfoType=1&ClientID=113>, and the FTDF Official Committee website, <http://usacapftdf.bmcgroup.com/default.aspx>.

### **MEMORANDUM OF LAW**

A confirmed plan of reorganization is binding on all parties, including investors such as the Jessups' IRAs. Bankruptcy Code § 1141(a) provides:

(a) Except as provided in subsections (d)(2) and (d)(3) of this section, the provisions of a confirmed plan bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan.

1 The Freedom of Information Act, 5 U.S.C. §552, is applicable to requests to federal  
2 government agencies. It is not applicable to bankruptcy estates, debtors, their counsel or agents.

3 **CONCLUSION**

4 WHEREFORE, Debtors respectfully request that this Court enter an order denying the  
5 Motion.

6 Respectfully submitted this 27th day of June, 2007.

7  
8 /s/ Lenard E. Schwartz

9 Lenard E. Schwartz, Nevada Bar No. 0399  
10 Jeanette E. McPherson, Nevada Bar No. 5423  
11 SCHWARTZER & MCPHERSON LAW FIRM  
12 2850 South Jones Boulevard, Suite 1  
13 Las Vegas, Nevada 89146

14 and

15 Annette W. Jarvis, Utah Bar No. 1649  
16 Steven C. Strong, Utah Bar No. 6340  
17 RAY QUINNEY & NEBEKER P.C.  
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20 Salt Lake City, Utah 84145-0385

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Las Vegas, Nevada 89146-5308  
Tel: (702) 228-7590 · Fax: (702) 892-0122


# EXHIBIT A

Bank of America  Higher Standards

Bank of America Direct

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

USA CAPITAL FIRST TRUST DEED FUND, LLC  
DEBTOR IN POSSESSION  
4484 S. PECOS RD.  
LAS VEGAS, NV 89121  
(702) 734-2400

Bank of America. 



14680  
32-1/1110


3/28/2007  
DATE

15,052.42  
AMOUNT

Fifteen Thousand Fifty Two Dollar(s) and Forty Two Cents \*\*\*\*\*

PAY  
TO THE  
ORDER  
OF First Savings Bank C/O  
Harry W Jessup, IRA  
2605 E. Flamingo Road  
Las Vegas, NV 89121

 SECURITY FEATURES INCLUDED. DETAILS ON BACK. 

AUTHORIZED SIGNATURE 

⑈014680⑈ ⑆111000012⑆ 375 553 2435⑈ ⑆0001505242⑆

ED

MF9 NA TEMPE AZ 04/03/2007  
TRACER 2409 006  
1221-0527-8  
0135009980

7625175313 FSE >0914-06833- 04/02/07 02

CREDITED TO THE ACCOUNT OF  
THE WITHIN NAMED PAYEE  
In Accordance With Payee's Instructions  
Absence of Endorsement Guaranteed  
First Savings Bank  
<091406833>

#### Check Info

**Account:** 3755532435  
**Amount:** 15,052.42  
**Check #:** 14680  
**Posted Date:** 04/04/2007

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Bank of America  Higher Standards

Bank of America Direct

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USA CAPITAL FIRST TRUST DEED FUND, LLC  
DEBTOR IN POSSESSION  
4484 S. PECOS RD.  
LAS VEGAS, NV 89121  
(702) 734-2400

Bank of America 

14697  
32-1/1110


3/28/2007  
DATE

5,451.80  
AMOUNT

Five Thousand Four Hundred and Fifty One Dollar(s) and Eighty Cents \*\*\*\*\*

PAY  
TO THE  
ORDER  
OF

First Savings Bank C/F  
Helen B. Jessup, IRA  
2605 E Flamingo Road  
Las Vegas, NV 89121

 AUTHORIZED SIGNATURE

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

⑈04697⑈ ⑆11000012⑆ 375 553 2435⑈ ⑆0000545180⑈

⑈04697⑈ ⑆11000012⑆ 375 553 2435⑈ ⑆0000545180⑈

7025175185 FSB >0914-05833- 04/02/07 02

CREATED TO THE ACCOUNT OF  
H.L. WITHIN NAMED PAYEE  
A COMPANY WITH PAYEE'S INSTRUCTIONS  
Absence of Fraudulent Guarantee  
First Savings Bank  
<091406833>

#### Check Info

**Account:** 3755532435  
**Amount:** 5,451.80  
**Check #:** 14697  
**Posted Date:** 04/04/2007

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# Bank of America Direct

CREDITED TO THE ACCOUNT OF  
THE WITHIN NAMED PAYEE  
In Accordance With Payee's Instructions  
Absence of Endorsement Guaranteed  
First Savings Bank  
<091406833>

WEB NA TEMPE AZ 05092007  
TRACER# 1187 006  
1221-0527-8  
00000047500

7020175007 FSD >0914-06833: 05/08/07 02

Product Group 4 - Domestic Issued by First Savings Bank Association

Check Info	
Account:	3755532435
Amount:	6,327.33
Check #:	15635
Posted Date:	05/10/2007

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